IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2803 of 2006
With
CIVIL APPLICATION No. 9417 of 2006
In
FIRST APPEAL No. 2803 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. LTD. - Appellant(s)
Versus
RUKHSHANABEN SALIMBHAI VORA & 1 - Defendant(s)

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Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/08/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 challenges the judgment and award dated 11.11.2005 of the Motor Accident Claims Tribunal, Nadiad in MAC Petition No. 395 of 2004 whereby the Tribunal awarded compensation of Rs.1,54,500/- together with interest and costs to respondent No.1 herein, the mother of the minor girl aged 7 years who died in a motor vehicles accident.

2. The deceased was being carried on a motor cycle of her father on 20.12.2004. When the father was riding the motor cycle with the deceased, a kite was being flown and the kite thread on the road slit the neck of the minor girl. The girl was removed to the hospital where she succumbed to the injuries.

3. Mr Mehul Sharad Shah, learned counsel for the appellant has submitted that the accident cannot be said to have taken place on account of involvement of a motor vehicle. If at all the claimants had any cause of action, it would be against the person who was flying the kite. Alternatively, it is submitted that the deceased was a pillion rider and, therefore, her risk was not covered. Strong reliance has been placed upon the decision of the Apex Court in United India Insurance Co. Ltd. vs. Tilak Singh, (2006) 4 SCC 404 (page 21).

It is also submitted the Tribunal has awarded interest at a higher rate of 12% per annum against the usual rate of 7.5% or 9% being awarded these days.

4. As far as the first contention is concerned, it cannot be accepted. As held by the Apex Court in Rita Devi vs. New India Assurance Co. Ltd., 2000 (2) GLR 1729, all that the claimant has to establish is that the death or disablement was caused due to an accident arising out of the use of a motor vehicle. In that case, the deceased was a rickshaw driver who was carrying passengers in the rickshaw. The passengers in the rickshaw decided to commit an act of felony of stealing the auto-rickshaw and in the course of achieving the said object, they caused the murder of the rickshaw driver. In a claim petition filed under Section 163A of the Motor Vehicles Act, 1988, the defence of the Insurance Company, which was accepted by the High Court, was that the death of the deceased was not caused by an accident arising out of use of the motor vehicle. Negativing the contention, the Apex Court held that the driver of the auto-rickshaw was duty bound to have accepted the demand of fare-paying passengers to transport them to the place of their destination and during the course of this duty, if the passengers had decided to steal the rickshaw and in that process caused the murder of the rickshaw driver, it has to be held that the death of the driver was caused accidentally in the process of committing theft of the auto-rickshaw. The Apex Court had no hesitation in coming to the conclusion that the murder of the deceased was due to an

accident arising out the use of the motor vehicle.

In the facts of the instant case also, the motor cycle was being driven by the father of the deceased minor girl and it was only during the use of the motor cycle on the road that the kite thread slit the neck of the minor girl aged 7 years. We have, therefore, no hesitation is coming to the conclusion that the death of the minor girl was caused by an accident arising out of the use of the motor cycle.

5. As regards the second contention, we find that the decision in Tilak Singh's case 2006 (4) SCC 404 was rendered in an application under Section 166 of the Act. In that case, the accident took place on 31.10.1989. The decision of the Apex Court was not rendered in an application under Section 163A of the Act introduced in the year 1994.

Section 163A of the Act reads as under :-

> **“163A. Special provisions as to payment of compensation on structured formula basis.-** (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authroised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> Explanation.- For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of

1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."

The non-obstante clause with which clause 163A (1) begins makes it clear that the liability of the Insurance Company to satisfy the award is not dependent upon any other provisions of the Act and, therefore, the question whether the passenger in the motor cycle was a gratuitous passenger or whether he can be said to be a third party or not would not be relevant. The contention, therefore, must be rejected.

6. As regards the contention that the Tribunal ought not to have awarded interest at the rate of 12% per annum, we would have considered this contention if the award was for a substantially higher amount. However, considering the fact that the award is only for Rs.1,54,500/- and the claim petition was filed in December 2004, the differential amount of interest on the compensation amount of Rs.1,54,500/- would work out to a very meagre amount. On this ground alone, we are not inclined to interfere with the award of interest at 12% per annum.

7. In view of the above discussion, the appeal is summarily dismissed.

The amount deposited by the appellant before this Court at the time of filing the appeal shall be transmitted to the Tribunal forthwith.

8. Since the appeal is dismissed, the Civil Application for stay does not survive and the same is accordingly dismissed.

[M.S. SHAH, J.]

[K.M. MEHTA, J.]

sundar/-